LOW TAN v. TIPALDO

[A.C.J. (Chua J.) March 7, 1961]

[Singapore — District Court Appeal No. 27 of 1960]

Practice and Procedure — District Judge's grounds of decision — Material circumstances not mentioned in judgment — Whether misdirection in law.

Landlord and tenant — Recovery of possession — Comparative hardship — Control of Rent Ordinance (Cap. 242), s.15(1)(j).

This was an appeal by a tenant from the decision of a District Judge who granted to the owner an order for recovery of possession. Two matters arose namely the question of comparative hardship under the proviso to section 15(1)(j), and as to whether the District Judge had misdirected himself in law in that he had failed to consider all the material circumstances of the case as he was bound to do under the said section.

Held: (1) that the burden of proof was on the appellant to show that greater hardship would be caused by granting an order for recovery of possession than by refusing it — in this case the appellant was unable to do so;

(2) there was no misdirection on the part of the District Judge. Just because the District Judge did not set out the material circumstances in his grounds of decision did not mean that he had not taken all the relevant circumstances into consideration.

Cases referred to:—

(1) *T.A.M. Abdul Aziz & Co.* v. *Shamsudeen Mohamed John* [1951] M.L.J. 141.

(2) *Thakurdas Kessamall* v. *Wassiamull Assomull & Co.* [1951] M.L.J. 219.

DISTRICT COURT APPEAL.

E. W. Barker for the appellant.

C. H. Smith for the respondent.

Chua J.: This is an appeal, by the tenant (the appellant) of No. 56 Cairnhill Road, from the decision of a District Judge who granted to the landlord (the respondent), who was the owner, an order for recovery of possession of the house. The claim of the landlord was based on section 15(1)(j) of the Control of Rent Ordinance (Cap. 242) namely that the landlord reasonably required the house for occupation by himself.

The only question before this Court is the question of comparative hardship under the proviso of section 15(1)(j). The burden of proof was on the appellant to show that greater hardship would be caused by granting an order for recovery of possession than by refusing it. The District Judge found that the appellant was unable to show that greater hardship would be caused by granting the order.

The main ground of appeal is that the District Judge had misdirected himself in law in that he failed to consider all the material circumstances of the case as he was bound to do under section 15(1)(j). The learned counsel for the appellant enumerated six material circumstances which he said had not been taken into consideration by the District Judge. His argument was that the six material circumstances were not mentioned in the grounds of decision of the District Judge and therefore the District Judge could not have taken them into consideration.

I am unable to agree with the argument of learned counsel for the appellant. Just because the District Judge did not set out all the material circumstances in his grounds of decision, it does not mean that he had not taken all these circumstances into consideration. It was the duty of the District Judge to consider all the material circumstances and he took time to consider his decision. I have no doubt that he must have directed his mind to the six material circumstances mentioned by the learned counsel for the appellant. There is nothing to indicate that the District Judge had disregarded any part of the appellant's case.

It cannot be denied that there was evidence before the District Judge of hardship on the respondent and on the appellant and the District Judge decided that the appellant had not satisfied him that the granting of the order would cause greater hardship than by refusing it. I consider that there were grounds on which he could come to this conclusion. Applying the ruling of the Court of Appeal in Singapore *T. A. M. Abdul Aziz and Co.* v. *Shamsudeen Mohamed John*[1] and in *Thakurdas Kessamall* v. *Wassiamull Assomull & Co.*[2] this Court should not disturb this finding of the District Judge.

The appeal is therefore dismissed with costs.

Appeal dismissed.

Solicitors: *Lee & Lee; Laycock & Ong.*

LEE KIM SWEE v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill and Good JJ.A) March 21, 1961]

[K.L. — F.M. Criminal Appeal No. 4 of 1961]

Criminal Procedure — Appeal against conviction for murder — Attack on verdict of jury — Onus on appellant — Penal Code, s.302.

The onus that lies on an appellant who seeks to attack the verdict of the jury is not just to show that the verdict is against the weight of evidence: what he must show is that it is unreasonable or cannot be supported having regard to the evidence.

COURT OF APPEAL (CRIMINAL).

Eugene Lye for the appellant.

B. T. H. Lee (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment): The appellant was convicted for murder in contravention of section 302 of the Penal Code and was sentenced to death. He has now appealed against his conviction.

The allegation against the appellant was that on 10th September, 1960, at about 2 o'clock in the morning somewhere between Pontian and Johore Bahru he murdered one Wong Yoke. Briefly, the case for the prosecution was that the appellant had some sort of trouble with the